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NO.

Supreme Court, U.S.
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**In the
Supreme Court of the United States**

OCTOBER TERM, 1986

JHJ LIMITED I,

Respondent,

VERSUS

CHEVRON U.S.A. INC.,

Petitioner.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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QUESTIONS PRESENTED

1. Whether the Court of Appeals denied Petitioner, Chevron U.S.A. Inc., of its right of appellate review over the federal constitutional claims alleged by it in this proceeding when it affirmed the District Court's Judgment based solely upon the Erie doctrine?

2. In holding that the Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq. grants lien rights to Respondent, JHJ Limited I, on those portions of the oil, gas and mineral lease owned by Petitioner situated beyond the conservation unit on which Respondent's drilling services were rendered, does not the judgment complained of:

(a) Authorize a taking of Petitioner's property without any

compensation, in violation of the Taking Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?

(b) Violate Petitioner's right of substantive due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States?

(c) Deny Petitioner equal protection under the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

LIST OF PARTIES

1. Petitioner - Chevron
U.S.A. Inc.; parent company - Chevron
Corp.; affiliated companies - A.K.
Chemie G.m.b.H.; A/S Hydrantanlaegget
Koebenhavns Lufthavn, Kastrup;
Aircraft Fuel Supply B.V.; AMAX Inc.;
Arabian American Oil Company; Aramco
Overseas Company; Aramco Services
Company; Associated Octel Company
(Plant) Limited; Associated Octel
Company Limited, The; Atlas Supply
Company; Burgan Pension Fund Trustees
Limited; Canaport Limited; Cansulex
Limited; Canyon Reef Carriers, Inc.;
Cetus Corporation; Compania De Niquel
Colombiano, S.A.; Coromandel
Fertilisers Limited; DE BA - S.p.A. -
Industria Petrolifera; Felix Oil
Company; Freeport Trading Company

Limited; Glen Park Gas Pipeline
Company Limited; Hydrant Servicing
Company Limited; International Gas
Transportation Company Limited;
Iranian Oil Participants Limited;
Iranian Oil Services (Holdings)
Limited; Irving Oil Company, Limited;
Irving Oil Limited; Irving Oil
Terminals Ltd.; Karonite Chemical
Company, Limited; Laurel Pipe Line
Company; Long Beach Oil Development
Company; Maasvlakte Olie Terminal
N.V.; Mainline Pipelines Limited;
Marine Agents and Brokers Limited;
MARS - Milan Airport Refuelling
Services S.p.A.; Mittelland Refinery
Limited; N.V. Rotterdam-Rijn
Pijpleiding Maatschappij; Nippon
Petroleum Detergent Company Limited;
Octel Societe Anonyme; Oil Insurance
Limited; Oil Investment Corporation

Ltd.; Pembroke Capital Company Inc.;
Petrosynthese S.A.; Plantation Pipe
Line Company; Raffineria de Roma
S.p.A.; Rimbey Pipe Line Co. Ltd.;
River Nile Petroleum Company Limited;
Rotterdam-Antwerpen Pijpleiding
(Nederland) N.V.; Rotterdam-Antwerpen
Pipjpleiding (Belgie) N.V.; SARACO
S.A.; Saudi Cable Company; SERAM -
S.p.A.; Societa per Azione Raffineria
Padana Olii Minerali SARPOM; Societe
d'Etude et d'Exploitation de la
Raffinerie du Tchad; Standard Pacific
Gas Line Incorporated; Sultran Ltd.;
TAR - Tankanlage Ruemlang A.G.;
Trans-Arabian Pipe Line Company;
UBAG-Unterflurbetankungsanlage
Flughafen Zurich; UNC Incorporated;
United Kingdom Oil Pipelines Limited;
West Texas Gulf Pipe Line Company.

2. Respondent - JHJ Limited
I, Managing General Partner - JHJ
Drilling Company; General Partners -
Warren J. Hudson of Houston, Texas;
Herman E. McInnis of Houston, Texas;
and Jerry L. Gibson of Houston, Texas;
the Limited Partners - Leslie
Alexander of Hollywood, Florida;
Thomas M. Biggs of Houston, Texas;
Jill A. Bradburn Family Trust of La
Jolla, California; Donald W. Brinckman
of Crystal Lake, Illinois; Mary Lee
Coleman of La Jolla, California;
William Diener of Chicago, Illinois;
Double-D Ranch, Inc. of New York, New
York; William J. Estrada of Houston,
Texas; Stanley H. Feldberg of
Wellesley Hills, Massachusetts; Fresno
Oil Company of Wichita Falls, Texas;
Frank H. Gower, Jr. of Ft. Meyers,
Florida; Russell A. Gwillim of

Elmhurst, Illinois; Robert S. Harp and Lore Harp of Westlake Village, California; Edwin V. Harris and Eilean G. Harris of San Diego, California; Haynes & Shirley Oil Company of Electra, Texas; Marvin B. Herscher of Cherry Hill, New Jersey; William Hudson and Mildred Crane Hudson of Weatherford, Texas; Milan J. Kalus of Amarillo, Texas; James M. Keelin of Atlanta, Georgia; Steven Knuckley of Wichita Falls, Texas; Robert A. Morris, Jr. of Sarasota, Florida; A.L.E. Schoonheim Samara of Manchester, New Hampshire; Shearson Loeb Rhoades Inc. of New York, New York; Hardwick Simmons of New Canaan, Connecticut; Margaret Simmons of Vero Beach, Florida; Smith Associates of Willsby, Massachusetts; James P. Tumpane of Al Khobar, Saudi Arabia;

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Thomas R. Turman of Dallas, Texas; Abe
W. Wagner of Seagoville, Texas; Robert
W. Wetzel of Holden, Massachusetts;
and Stanley F. Witkowski of Chatham
Township, New Jersey.

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PETITION FOR WRIT OF CERTIORARI
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Chevron U.S.A. Inc.

("Chevron") petitions for a writ of
certiorari to review the judgment of
the United States Court of Appeals for
the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A) is reported at 806 F.2d 82. The opinion of the District Court (App. B) is reported at 617 F.Supp. 729.

JURISDICTION

The opinion of the Court of Appeals was issued on December 19, 1986 (App. A). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

28 U.S.C. §1254(1) (1980)

provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

"Section 1. * * * No State shall make or enforce any law which shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides in pertinent part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq., in force at the time this case was decided provided, in pertinent part, as follows:

"Sec. 4861. Privilege for labor, services or supplies

Any person who performs any labor or service in drilling or in connection with the drilling of any well or wells in search of oil, gas or water, or who performs any labor or service in the operation or in connection with the operation of any oil, gas or water well or wells, has a privilege on all oil or gas produced from the well or wells, and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached

or located on the lease,
 for the amount due for
 labor or service, in
 principal and interest,
 and for the cost of pre-
 paring and recording the
 privilege, as well as
 ten percent attorney's
 fees in the event it
 becomes necessary to
 employ an attorney to
 enforce collection.
 * * *

STATEMENT

Respondent, JHJ Limited I
 ("JHJ"), instituted this proceeding¹
 seeking judicial recognition of a lien
 granted under the Louisiana Oil Well
 Lien Statute, La. R.S. 9:4861 et seq.,
 against an oil, gas and mineral lease

¹This suit was originally
 filed in state court but was removed
 by Chevron to the United States
 District Court for the Middle District
 of Louisiana pursuant to 28 U.S.C.
 §1441. Jurisdiction was based upon
 diversity of citizenship and amount in
 controversy in excess of \$10,000,
 excluding interest and costs. 28
 U.S.C. §1332.

which Petitioner, Chevron U.S.A. Inc. ("Chevron") acquired from one Robert H. Wunsch (hereafter the "Wunsch lease") covering land situated in Livingston Parish, Louisiana.

JHJ's claim arose because Martin Exploration Company ("Martin") failed to pay JHJ for a well which it drilled for Martin (but which was never completed, and thus never produced) on a portion of Chevron's Wunsch lease acreage which was included within a drilling and production unit created by the Louisiana Commissioner of Conservation pursuant to the authority of the Louisiana Conservation Act, La. R.S. 30:1 et seq.

Chevron was not a party to the drilling contract between Martin and JHJ, and did not participate in the drilling of Martin's well. Thus,

Chevron has no personal liability to JHJ for any of the debts owed to it by Martin; its liability, if any, is in rem, as the lien applies only against Chevron's Wunsch lease by virtue of the Louisiana Oil Well Lien Statute.

Pursuant to a writ of sequestration which JHJ obtained, the Sheriff of Livingston Parish seized all of Chevron's leasehold interest in the Wunsch lease. Included within the scope of this writ was Chevron's Wunsch lease share of production and the proceeds of such production from other wells situated in other units created by the Commissioner within which portions of the Wunsch lease are also situated. JHJ did not provide any services, or furnish any materials in connection with the drilling or completion of those producing wells.

Those wells are operated by Amoco Production Company, and are not located on Chevron's Wunsch lease.²

As interpreted and applied by the courts below, the Louisiana Oil Well Lien Statute, pursuant to which JHJ's lien is claimed, is unconstitutional as applied to Chevron, as a taking of Chevron's property rights without compensation and without due process of law. Furthermore, as applied in relation to Louisiana's Conservation Act, La. R.S. 30:1 et seq., the statute denies Chevron its

²A land plat which shows the three drilling units created by the Louisiana Commissioner of Conservation pursuant to La. R.S. 30:9, together with the acreage of Chevron's mineral lease (colored) which is contributed to each, is attached as Appendix E. It also shows the location of Martin's well on Chevron's Wunsch lease, together with the location of the two Amoco operated wells.

right to equal protection under the law. All of these rights are guaranteed to Chevron by the Fifth and Fourteenth Amendments to the Constitution of the United States.

The District Court recognized the validity of JHJ's lien as to all portions of the Wunsch lease, as well as to all oil and gas production (and proceeds) attributable thereto from the Amoco operated wells located in the other units for which JHJ provided no materials or services. In doing so, the Court rejected Chevron's claim that, as applied to it under the facts of this case, the Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq., is unconstitutional.

The Fifth Circuit Court of Appeals affirmed, but did so upon Erie principles. Six months prior to the

Fifth Circuit's decision, a Louisiana state court of appeals had rendered its decision in Lor, Inc. v. Martin Exploration Co., 489 So.2d 1326 (La. App. 1st Cir. May 28, 1986), writ den. 493 So.2d 1217 (La. 1986). That suit is the companion case to the one presented by this writ application. It involves the same property and the identical issues; only the parties, with the exception of Chevron, are different.³

In Lor, the Louisiana state court of appeals adopted as its own almost the entire opinion of the United States District Court in the instant case. And, even though

³On December 24, 1986, Chevron appealed the Lor decision to this Honorable Court where same is presently pending under docket No. 86-1198.

Chevron timely appealed the Federal District Court's decision to the Fifth Circuit Court of Appeals, that Court found the state appellate court's decision to be determinative of its appeal, notwithstanding that the state court's decision was, in effect, the very opinion which Chevron had appealed to the Fifth Circuit.

By affirming the United States District Court based solely upon the Erie doctrine, the Fifth Circuit Court of Appeals refused to consider the federal constitutional issues which Chevron raised regarding the Louisiana Oil Well Lien Statute. Thus, the Fifth Circuit has effectively denied Chevron its right of appellate review over the federal constitutional claims raised by it in this proceeding.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to review the decision of the United States Fifth Circuit Court of Appeals because:

1. By its affirmance of the District Court's decision based solely upon Erie principles, the Court of Appeals effectively denied Chevron appellate review over its federal constitutional claims; and

2. The Louisiana Oil Well Lien Statute, as applied to Chevron under the particular facts of this case, violates the Taking Clause of the United States Constitution, and denies Chevron its constitutionally guaranteed rights of substantive due process and equal protection under the law.

I.

**The Erie Doctrine Applies Only
To Issues of State Substantive Law,
Not To Federal Constitutional Issues**

In Erie R. Co. v. Tompkins,
304 U.S. 64, 82 L.Ed. 1188 (1938),
this Court said:

"Except in matters
governed by the Federal
Constitution or by acts
of Congress, the law to
be applied in any case
is the law of the
state." (304 U.S. at
78).

While the Erie doctrine re-
quires a federal court sitting in
diversity to apply the substantive law
of the forum state, it does not
require application of state court
decisions on matters which are exclu-
sively federal in nature. Thus, a
federal court is not bound, under
Erie, by a state court's determination
as to the validity of a state statute

under the Federal Constitution. As this Court said in Ward & Gow v. Krinsky, 259 U.S. 503, 66 L.Ed. 1033 (1922):

"But this court, while bound by the construction of the statute adopted by the state court of last resort - that being a question of state law - is not concluded by its reasoning, but must exercise independent judgment, when called upon to determine the federal question, whether an act as construed and applied, is repugnant to the restrictions of the [Fourteenth] amendment." (259 U.S. at 250).

Even the Fifth Circuit Court of Appeals has recognized this basic limitation on the Erie doctrine's application. Woods v. Holy Cross Hospital, 591 F.2d 1164, 1171-1172 (5th Cir. 1979). Despite this prior recognition, however, that court

refused to consider the federal constitutional claims urged by Chevron in this case, holding instead that it was Erie bound by the state appellate court's decision in Lor, Inc. v. Martin Exploration Company, supra, 489 So.2d 1326 (La. App. 1st Cir. 1986), writ. den., 493 So.2d 1217 (La. 1986), including that court's rulings on the federal constitutional claims which Chevron had raised. In doing so, the Fifth Circuit effectively denied Chevron its right of federal appellate review over these claims.

II.

The Louisiana Oil Well Lien Statute Authorizes A Taking Of Chevron's Property Without Compensation

Under the Fifth and Fourteenth Amendments to the United States Constitution, state governments have

the power to regulate the use of private property, provided that such regulation represents reasonable exercise of the state's inherent police power. Goldblatt v. Town of Hempstead, 369 U.S. 590, 8 L.Ed.2d 130 (1962). That regulation, however, will be deemed unconstitutional "when it goes so far as to become a taking" of the property. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L.Ed. 322 (1922). Or, as Justice Clark said in Goldblatt v. Town of Hempstead, 369 U.S. 590, 8 L.Ed.2d 130, 133-134 (1962):

"This is not to say, however, that governmental action in the form of regulation cannot be so onerous as to constitute a taking which constitutionally requires compensation."

This Court has consistently held that a constitutional challenge

to the exercise of legislative power on the grounds that it operates as a taking without compensation requires a two step analysis. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 425, 73 L.Ed.2d 868 (1982); Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 57 L.Ed.2d 631 (1978), reh. den., 439 U.S. 883, 58 L.Ed.2d 198 (1978).

First, the legislative act must be scrutinized to determine if it represents a rational exercise of the State's inherent police power. If the act fails to meet this test, it is facially unconstitutional, and no further scrutiny of the act is necessary. If, however, the act is constitutional on its face, it must still meet a second level of analysis: the Court must assess the impact of the

act on the affected property. Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 136, 57 L.Ed.2d 631 (1978), reh. den., 439 U.S. 883, 58 L.Ed.2d 198 (1978). An act found to be a legitimate exercise of legislative authority may be unconstitutional, as applied, if it operates as a total deprivation of the use or value of the affected property, or results in the use or occupation of the property without compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 425-26, 73 L.Ed.2d 868 (1982).

The threshold question presented by this application is whether the Louisiana Oil Well Lien Statute is a legitimate exercise of the state's inherent police power. In evaluating the reasonableness of a statute, the

Court is required to review its purpose, the availability of alternative protective measures and the loss caused by the statute. Goldblatt v. Town of Hempstead, 369 U.S. 590, 594, 8 L.Ed.2d 130 (1962).

The legislative intent in enacting the Louisiana Oil Well Lien Statute is to protect unpaid laborers and materialmen by providing them with a privilege on the property for which their labor and services have been supplied. Sargent v. Freeman, 204 La. 997, 16 So.2d 737, 739 (1943). It is irrational, however, to assert that this purpose is served by the granting of a lien over a leasehold interest in oil and gas production and its proceeds from wells for which the lien claimant provided absolutely no services. Under that analysis, the

statute merely substitutes one financial loss for another, i.e., Chevron's for JHJ's, and there is nothing to support the argument that Chevron is any less worthy of protection than JHJ.

Alternative means of protecting parties such as JHJ are readily available. Oil field laborers and materialmen would be reasonably protected by limiting the reach of the Louisiana Oil Well Lien Statute to property which has directly benefited from their labor and materials. That would include the entire working interest of the mineral leasehold in the well (and conservation unit) for which the lien claimant's services were rendered. In addition, the lien claimant will always be able to look to the assets of the party employing his services for payment of the

amounts due, which party, of course, remains personally liable for the debt incurred.

Moreover, the statute fails to pass constitutional muster when the impact of the statute on the affected property is considered. By granting an in rem lien against Chevron's Wunsch lease interest in wells which are neither located on its lease, nor serviced by JHJ, Chevron is being deprived, for no legitimate reason, of its right to possess, use and dispose of its Wunsch lease interest in those wells. This Court has consistently held that governmental action resulting in the deprivation of these fundamental property rights constitutes a taking for which compensation is required. Loretto v. Teleprompter

Manhattan CATV Corp., 458 U.S. 419, 435, 73 L.Ed.2d 868 (1982).

Louisiana law provides that the privilege created by the Oil Well Lien Statute may be enforced by a writ of sequestration and that the seized property can be sold to satisfy a judgment recognizing the validity of the lien claimant's privilege. The Louisiana Oil Well Lien Statute, therefore, sanctions and legitimates a deprivation of Chevron's right to possess, use and dispose of its property. As applied to the particular facts of this case, the statute unconstitutionally authorizes a taking of Chevron's Wunsch lease participation in two unit wells neither serviced by JHJ, nor located on the lease.

III.
The Louisiana Oil Well Lien
Statute Violates Chevron's
Right Of Substantive Due Process

The Fourteenth Amendment to the United States Constitution guarantees that:

"No State shall * * *
deprive any person of
life, liberty, or
property without due
process of law * * *"

Applying the Louisiana Oil Well Lien Statute so that JHJ can enforce its lien against those portions of Chevron's Wunsch lease on which JHJ did not perform any work or furnish any supplies violates the substantive aspects of this constitutional guarantee. In order for the legislation to be constitutionally valid there must be a rational connection to a valid state objective. New

Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed. 2d 511 (1976).

There is no rational basis for imposing liability for all of JHJ's lien on that portion of Chevron's lease where JHJ performed no services, particularly where Chevron had no personal liability for any of the costs incurred in the drilling of Martin's well on another portion of the lease. In fact, it is completely irrational to impose the entire burden of this lien on Chevron simply because Martin's unit well happened to be drilled on its Wunsch lease - the result of a decision in which Chevron did not participate, and which could have been made over Chevron's objection. Nunez v. Wainoco Oil & Gas Company, 488 So.2d 955 (La. 1986), cert. den. and app. dismissed, 55 USLW

3315, 93 L.Ed.2d 345 (1986). No other working interest owner in the unit for which this well was drilled is exposed to any similar liability.

In addition to being irrational, the lower courts' interpretation of this statute completely ignores the facts that both the Wunsch lease and the Louisiana Oil Well Lien Statute have been superseded by the Louisiana Conservation Act, La. R.S. 30:1 et seq., and the Commissioner's Orders issued pursuant thereto. By applying the statute without regard to the effect of those Orders, Chevron faces a loss of property which the Louisiana Legislature never intended to impose. The result is that Chevron is deprived of its Wunsch lease participation in two unit wells, neither serviced by the lien claimant nor

located on the Wunsch lease, in clear violation of the substantive due process protections guaranteed to it by the Fourteenth Amendment to the United States Constitution.

IV.

The Louisiana Oil Well Lien Statute Violates Chevron's Right Of Equal Protection Under The Law

The Fourteenth Amendment guarantees that all persons similarly situated will be dealt with alike, and prohibits arbitrary discrimination between persons similarly situated. However, in the face of that guarantee, Chevron is being treated unequally.

The protection afforded by the constitutional guarantee of equal protection is applicable to corporations, like Chevron, as well as individuals. Metropolitan Life Insurance

Co. v. Ward, 470 U.S. 869, 84 L.Ed.2d 751 (1985), reh. den., 471 U.S. 1120, 86 L.Ed.2d 269 (1985). Chevron, therefore, is entitled to demand that the exercise of the State's inherent police power, i.e., the seizure of its property as authorized by the Louisiana Oil Well Lien Statute, be subject to the constitutional limitation that the State of Louisiana shall not deny equal protection of the law to any person within its jurisdiction.

This Court must conclude that the classification established by the State of Louisiana, i.e., imposing in rem liability for lien claims only upon the the lease on which the unit well is physically located, is arbitrary in terms of the permissible aims of governmental action where, as here, the lease participates in more than

one unit, and where principles of Louisiana law relating to the unitization of oil and gas interests, declare that all operations conducted within a unit are considered as operations constructively conducted on each of its component leases. Delatte v. Woods, 232 La. 341, 94 So.2d 281 (1957); Hardy v. Union Producing Co., 207 La. 137, 20 So.2d 734 (1944).

State statutes attacked on federal equal protection grounds are traditionally analyzed under a twotier scheme of review. If the statute operates to the disadvantage of some suspect class or impinges upon a fundamental right either explicitly or implicitly protected by the Constitution, this Court has held that a strict judicial scrutiny of the statute is required. San Antonio

Independent School District v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), reh. den., 411 U.S. 959, 36 L.Ed.2d 418 (1973); Bullock v. Carter, 405 U.S. 134, 31 L.Ed.2d 92 (1972). In all other cases, the statute is analyzed under a "rational basis" standard. McGowan v. Maryland, 366 U.S. 420, 6 L.Ed. 393 (1961).

(a)
The Strict Scrutiny Test

In the instant case, the Louisiana Oil Well Lien Statute limits Chevron's right to enjoy, use and control its property. This court has ruled that the right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in fact a fundamental civil right guaranteed by the Constitution. Lynch v. Household Finance

Corporation, 405 U.S. 538, 31 L.Ed.2d 424 (1972), reh. den., 406 U.S. 911, 31 L.Ed.2d 822, holding:

"Property does not have rights. People have rights. * * * In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. That rights in property are basic civil rights has long been recognized."
(405 U.S. at 552)

Because the Louisiana Oil Well Lien Statute regulates and limits a fundamental right of Chevron, its provisions must pass constitutional muster under the strict scrutiny standard of review in order to withstand an attack on equal protection grounds. The essence of this test was set forth in Weber v. Aetna Casualty & Surety Company, 406 U.S. 164, 31 L.Ed.2d 768 (1972), where this Court said:

"Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny, Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" (406 U.S. at 172-173)

As previously noted, the Louisiana Oil Well Lien Statute was enacted to protect those who supply services and materials in connection with drilling a well. Sargent v. Freeman, supra, 204 La. 997, 16 So.2d

737 (1943), The statute, however, was originally passed by the Louisiana legislature long before the adoption of the Louisiana Conservation Act, La. R.S. 30:1 et seq. in 1940. No court, however, has ever addressed the impact which unitization has had on the lien rights granted under this statute. The operation and interaction of these two statutes simply cannot be ignored, for it is because the courts below granted JHJ the benefits of unitization while refusing to recognize its effects, that Chevron is being denied its constitutional right to equal protection under the law.

Under Louisiana's concept of oil and gas unitization, all of the mineral interest owners in a unit contribute, either up front in cash, or from their proportionate share of the

proceeds of production, to the cost of drilling the unit well. The Louisiana Conservation Act establishes the framework under which mineral owners with an interest in a drilling unit participate, or refuse to participate, in the drilling of the unit well, and the method by which their share of the cost of drilling and producing the well is calculated. La. R.S. 30:10A(2)(b)(i).

Under the decisions of the District Court and the Court of Appeals, of all the mineral owners in the unit where Martin's well was drilled, only Chevron's Wunsch lease acreage is affected by JHJ's lien, even though each of those owners stood to benefit from the drilling of the Martin's well, and would have shared proportionately in its production, had

it been completed as a producer. It is simply because the Commissioner of Conservation fixed the drill site location of Martin's unit well on the Wunsch lease that Chevron alone is exposed to in rem liability for the entirety of JHJ's claim. No other lessee in this unit has any similar exposure for any portion of JHJ's claim. There is no compelling state interest that can possibly justify placing the entire burden of JHJ's lien on Chevron's Wunsch lease, particularly when all of the other leases which were included in this unit would have shared in unit production proportionate to their respective interests, had Martin's well been completed as a producer.

This is not a case of a lien claimant seeking payment for his services from the actual well which

received those resources. On the contrary, the courts below applied the Louisiana Oil Well Lien Statute so as to allow JHJ to recover payment for services rendered by it on Martin's well out of production from other wells, located on different leases in different units, and for which JHJ provided no services whatsoever. The decisions of the lower courts recognize the principle of unitization, by allowing JHJ to have its lien satisfied out of production from wells located off the Wunsch lease, solely because a portion of the Wunsch lease is included in other producing units, but refuse to acknowledge the effect of unitization, i.e., that a lease's participation within a unit is limited by the boundaries established through the unitization process.

The purpose of the Louisiana Oil Well Lien Statute is just as easily fulfilled by limiting the effect of the lien to the unitized portions of the leases forming a part of the unit for which the lien claimant's services were rendered. That interpretation is reasonable and consistent with Louisiana's concept of unitization, La. R.S.30:1, et seq. Any other interpretation places the Lien Statute and the Conservation Acts in direct conflict, and results in an unconstitutional denial of Chevron's right to equal protection under the law.

(b)

The 'Rational Relation' Test

Alternatively, when economic regulation is challenged as violating the Equal Protection Clause, this

Court has also used the "rational relation" test, the determinative factor of which is whether the classification is reasonably related to the avowed purpose of the legislation. McGowan v. Maryland, 366 U.S. 420, 6 L.Ed.2d 393 (1961). A resolution of this question requires a consideration of (a) whether the challenged legislation has a legitimate purpose, and (b) whether it was reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose. Western & Southern Life Insurance Company v. State Board of Equalization of California, 451 U.S. 648, 668, 68 L.Ed.2d 514 (1981).

Under this analysis, equal protection requires that the statutory classification bear a rational relationship to the legislature's objective in enacting the statute. R. J.

D'Hemecourt Petroleum, Inc. v. McNamara, 444 So.2d 600 (La. 1983), cert. den., 469 U.S. 820, 105 S.Ct. 92, 83 L.Ed.2d 39 (1984). The classification, in order to be valid, must carry out the legislature's intent in defining the classification. Rudolph v. Massachusetts Bay Insurance Co., 472 So.2d 901 (La. 1985).

Admittedly, the protection of oil field laborers and materialmen represents a legitimate legislative purpose and thus satisfies the first of the two questions inherent to this analysis. The Louisiana Oil Well Lien Statute does not, however, satisfy the second predicate question, particularly in the context of unitization. It does not fairly and equally distribute liability for lien claims arising from the drilling or operation of a unit

well where only the particular lease upon which the unit well is physically located is required, by statute, to bear the entire burden of the supplier's lien.

The effect of unitization is to force mineral owners to share the obligations associated with the drilling and operation of the unit well. It is patently unreasonable for Louisiana to have believed that by granting a lien on the drill site lease's participation in production from other units, the avowed purpose of the statute would be served. Why should a claimant be entitled to seek payment of his lien out of production from wells for which he contributed absolutely nothing? Clearly, the classification created by the statute

is not rationally related to achievement of a legitimate state purpose and, therefore, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

If the judgments of the courts below are allowed to stand, Chevron's Wunsch lease and its participation in production from the units for which JHJ performed no services, will be seized and sold to satisfy a debt resulting from the drilling of a well in a completely different unit. Surely, the purposes of the statute, as recognized in Sargent v. Freeman, supra, 204 La. 997, 16 So.2d 737 (1943), did not contemplate such a result. The statute's intended purpose can never be fulfilled unless the commissioner's units are recognized as defining and limiting the property

interests subject to in rem liability for the payment of lien claims arising from unit operations. Under that interpretation, the mineral interest owners in the unit share proportionate liability consistent with their right to share proportionately in unit production. Under any other interpretation, Chevron is denied its constitutionally guaranteed right of economic equal protection under the law.

CONCLUSION

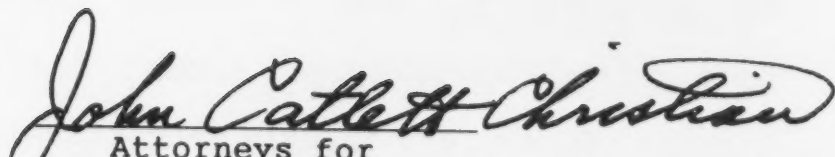
The federal constitutional claims raised by Chevron in this proceeding are substantial and serious. By refusing to consider them based upon Erie principles, the Fifth Circuit Court of Appeals effectively denied Chevron its right of appellate

review over these federal constitutional claims raised by it in this proceeding.

Chevron respectfully submits that certiorari should be granted to review the decisions of the United States Fifth Circuit Court of Appeals and District Court for the Middle District of Louisiana.

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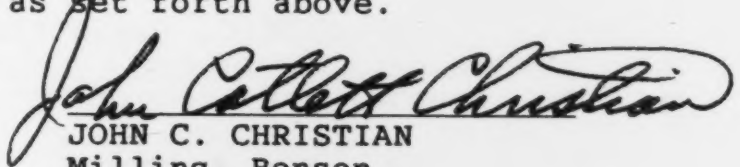

Attorneys for
CHEVRON U.S.A. INC.

**CERTIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF
THE UNITED STATES**

I, JOHN C. CHRISTIAN, one of the counsel of record for Chevron U.S.A. Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of March, 1987, I served three (3) copies of Chevron U.S.A. Inc.'s Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit upon counsel of record for Respondent, JHJ Limited I, by hand delivery in an envelope addressed as follows:

Mr. F. Neelis Roberts
Gordon, Arata, McCollam,
Stuart & Duplantis
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New Orleans, LA 70170

It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

A handwritten signature in cursive script, reading "John C. Christian". The signature is written in dark ink and is positioned above the typed name.

JOHN C. CHRISTIAN
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86 - 1484
NO.

Supreme Court, U.S.

FILED

MAR 8 1987

JOSEPH F. SPANIO, JR.
CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1986

JHJ LIMITED I,

Respondent,

VERSUS

CHEVRON U.S.A. INC.,

Petitioner.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
APPENDIX TO PETITION**

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APPENDIX A

JHJ LIMITED I, Plaintiff-Appellee,

v.

CHEVRON U.S.A. INC.
Defendant-Appellant.

No. 86-3043.

United States Court of Appeals,
Fifth Circuit

Dec. 19, 1986

Appeal from the United States
District Court for the Middle District
of Louisiana.

Before BROWN, RANDALL and
HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

JHJ Limited I (JHJ), a
drilling contractor, initiated this
suit by filing in the Louisiana state
court a petition for a writ of seques-
tration covering all right, title and
interest of Chevron U.S.A. Inc.
(Chevron) in an oil and gas lease (the

Wunsch Lease) entered into by Robert H. Wunsch and Chevron, including all oil and gas (and proceeds thereof) produced from the lease. The case was removed by Chevron to federal district court based upon diversity of citizenship and was tried upon a joint stipulation of facts. The district court held that JHJ's lien under the Oil, Gas and Water Well Lien Act, La.Rev.Stat. Ann. §9:4861 et seq. (West 1983 & Supp. 1986), applied to the entire Wunsch Lease, including Chevron's share of the production from wells in units other than the unit in which the well drilled by JHJ was located. See 617 F.Supp 729 (M.D.La.1985). Subsequent to the district court's decision, the Louisiana Court of Appeal for the First Circuit reached the same

conclusion in five consolidated suits brought against Chevron by other furnishers of labor, services and supplies in connection with the drilling of the same well that is the subject of this case. LOR, Inc.v. Martin Exploration Co., 489 So.2d 1326 (La.Ct.App. 1st Cir.1986), writ denied, 493 So.2d 1217 (La.1986).

We are persuaded, as was the Louisiana Court of Appeal, that the district court's decision in this case is a correct interpretation of Louisiana law. Moreover, in view of the decision of the Louisiana Court of Appeal, we are now Erie bound to affirm.

AFFIRMED.

JOHN R. BROWN, Circuit Judge,
concurring.

Following our ancient declaration that Erie binds us by the "latest, highest writing Court" Canal Insurance Co. v. Baldree, 489 F.2d 1393, 1394, (5th Cir.1974); Ford Motor Co. v. Mathis, 322 F.2d 267, 269 (5th Cir.1963), the destiny of this case was sealed by the Louisiana Court of Appeals decision LOR, Inc. v. Martin Exploration Co., 489 So.2d 1326 (La.Ct.App. 1st Cir.1986). That it was based to an undeniable extent on the earlier writings of the distinguished Federal District Judge in our very own case does not detract from Erie's command that matters of state law are to be determined by state law and state expositors.

Consequently, I would leave entirely to Louisiana Courts--who have now spoken--determination of this

Louisiana land operation problem enshrouded as it is, in the some-time quaint codal language and the beguiling mysteries of the Code Civil.

I am content to leave the intrinsic merits to Louisiana whose problem, whose laws are at stake and whose court has authoritatively ordained the outcome. Our imprimatur, at best, is superfluous and may signal a denigration of the supremacy of state courts.

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APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JHJ LIMITED I CIVIL ACTION
VERSUS NO. 82-0882-A
CHEVRON U.S.A., INC.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This matter has been tried on the merits. Other aspects of this action have been previously considered by the court. JHJ Limited I versus Chevron U.S.A., Inc., 580 F.Supp. 6 (M.D.La. 1983). Trial of the defendant's counter-claim and of the defendant's third party demand has been severed from the main demand. The main demand has been tried upon a written stipulation of facts which is hereby adopted by reference.

This action was instituted in the Twenty-first Judicial District Court for the Parish of Livingston, Louisiana, and was removed by Chevron. Plaintiff is a Texas limited partnership with its managing and general partners being citizens of Texas. Chevron is a California corporation with its principal place of business in California. The matter in controversy exceeds \$10,000, exclusive of interest and cost. This court has jurisdiction under 28 U.S.C. §1441(a).

The stipulated facts may be summarized as follows: Chevron is the lessee in an oil, gas and mineral lease dated November 10, 1973, referred to as the Wunsch lease, covering some 127 acres of land situated in Livingston Parish.

By an order dated October 15, 1981, the Commissioner of Conservation created a unit (the S Unit) which included about 89 acres of Chevron's Wunsch lease. The Commissioner ordered that each tract included in the unit was to share in production from the unit well in proportion to the surface area each tract bears to the entire surface area of the unit. The unit was created for the purpose of insuring orderly mineral development, to prevent waste and to avoid the drilling of unnecessary wells.

Although Chevron received timely notice of the unit application and the hearing thereon, it chose not to participate in or oppose the proceedings.

The Commissioner's order designated Celt Oil Co., Inc. as the

unit operator and Celt requested Martin Exploration Company to handle the engineering aspects of the drilling of the unit well.

The Commissioner chose Chevron's Wunsch lease as the surface location for the S Unit well. Again, Chevron had notice of this hearing but chose not to attend or to participate.

Chevron agreed to let Martin use its Wunsch lease surface rights but refused to participate in the cost of the drilling of the well. Subsequently, Martin was designated as unit operator, vice Celt.

JHJ Limited I agreed with Martin to drill the unit well on the Wunsch lease. The well was spudded in on January 15, 1982. Chevron was not a party to this agreement.

Subsequently, Chevron granted a farmout agreement to Martin covering that portion of the Wunsch lease (about 89 acres) which was included in the S Unit, effective March 1, 1982. Under the farmout agreement, Martin would earn an interest in the lease if the well drilled at its sole cost produced minerals in paying quantities.

Between January 4 and June 30, 1982 JHJ provided Martin with oil and gas drilling equipment, supplies and services in connection with the drilling of the well and conducted drilling operations.

In June 1982, when the well had reached a depth of 19,954 feet, Martin suspended operations and no further operations have taken place since then. The well has never been completed as a commercial producer and

Martin has never earned any interest in the Wunsch lease.

Martin is unable to pay JHJ the balance owed for services rendered and equipment furnished in connection with the drilling of the well. After granting all credits to which Martin is entitled, the sum of \$1,810,594.29 remains due to JHJ for the oil and gas drilling equipment, supplies and services provided by it in the drilling of the Wunsch well.

JHJ has filed three affidavits in the mortgage records of Livingston Parish, Louisiana, claiming a lien and privilege on Chevron's Wunsch lease under the provisions of LSA-R.S. 9:4861 et seq., the Louisiana Oil Well Lien Act. These affidavits meet the procedural requirements of the Act and this suit was timely filed

to preserve whatever lien rights, if any, JHJ may have under the statute.

Portions of the Wunsch lease have also been force pooled into two other units by orders of the Louisiana Commissioner of Conservation, the H Unit and the F Unit. Unit wells on both of those units have been successfully completed and Chevron's Wunsch lease has a working interest in all production from each of those wells. Neither well is physically located on the Wunsch lease and Chevron's participation in the production arises solely from the force pooling orders of the Commissioner.

JHJ did not render any services or furnish any machinery or equipment in connection with the drilling of either of the other two unit wells, the F Unit or the H Unit.

Under these stipulated facts, plaintiff claims that the Louisiana Oil Well Lien Statute grants it a privilege or lien upon the entire Wunsch lease including Chevron's share of the production from the F Unit and the H Unit wells, neither of which are located upon the Wunsch lease. Chevron argues that it would be at best inequitable, at worst unconstitutional, to extend the effect of the privilege beyond the limits of the S Unit established by the Commissioner of Conservation upon which sits the well drilled by JHJ under its contract with Martin.

The Louisiana statute, LSA-R.S. 9:4861 grants a privilege or lien to "any person who performs any labor or service" and to any person who "furnishes any fuel, drilling

rigs, standard rigs, machinery, equipment, material or supplies" in connection with the drilling of a well to search for oil, gas or water, inter alia, "... on all oil or gas produced from the well or wells and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells and the lease whereon the same are located..." (emphasis supplied).

Although no Louisiana appellate court has passed upon this precise question, this court has little difficulty in concluding that the statute means exactly what it says -- a supplier of well drilling services and equipment is granted a privilege upon "the lease whereon" the well is located. The well drilled by JHJ is located upon the Wunsch lease.

Accordingly, JHJ is entitled to a privilege upon the Wunsch lease.

Chevron's argument to the contrary presents a convoluted, serpentine trail through the Louisiana conservation laws concluding with the proposition that, for purposes of the Oil Well Lien Act (but for no other purpose) the action of the Commissioner of Conservation in force pooling three different areas of the Wunsch lease with other leases had the effect of dividing the lease "for operational purposes" into three separate and independent tracts¹ thus limiting JHJ's privilege to the

¹Chevron does not mention it but presumably, its argument dictates that the portion of the Wunsch tract which is not included in any unit would constitute a fourth tract.

area of the Wunsch lease included in the S Unit, where the well was drilled. Since the well was not completed as a producer, a privilege upon that portion of the Wunsch lease would be of little benefit to JHJ.

Both sides agree that Louisiana's conservation laws represent a valid exercise of the state's police power to conserve its mineral resources and that orders issued by the Commissioner of Conservation within the area of his delegated authority nullify and supercede private contractual rights which are in conflict with those orders. Hunter v. McHugh, 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed.5 (1943); Monsanto Chemical Co. v. Southern Natural Gas Co., 234 La. 939, 102 So.2d 223 (1958). The unitization or pooling of different tracts into

one production unit is based on the very practical notion that the limits of any reservoir of hydrocarbons is determined not by property lines but by subsurface geological facts². Accordingly, one common pool may be located beneath parts or all of numerous tracts of land; conversely, one tract of land might contain hydrocarbons which are found in different pools and the pools may also underlie other tracts of land. It is the duty of the Commissioner of Conservation to develop the natural resources without

²See LSA-R.S. 30:3(6) which defines "pool." Nevertheless, the undersigned recalls instances in years gone by of listening with amazement while experts solemnly testified to the Commissioner that the limits of an underground formation followed surface features, such as highways or even, on occasion the limits of a particular property line.

waste and with due regard to conservation principles. See LSA-R.S. 30:234. Thus, when the Commissioner of Conservation determines the limits of a reservoir, orders the pooling of tracts and designates the location of a unit well, he has determined the location which will drain that common pool to the best advantage of all whose land may lie above it, as well as for the best interest of the state. See LSA-R.S. 30:9.

Thus the Wunsch lease then has been determined to include parts of three reservoirs or pools. One such pool, the Martin Unit well drilled by JHJ, is a dry hole; the other two are both producers. Since the F Unit well and the H Unit well are both producing from reservoirs, each of which includes a portion of

the Wunsch lease, the Commissioner's order includes the requirement that a portion of that production be paid to that lease.

Louisiana's courts have recognized this difference between surface contract rights and subsurface geological facts. Where all or a part of a tract of land is included in a unit order by the Commissioner, but the well drilled into the common pool is not drilled on that tract, the lessor and lessee receive the same revenue as they would have received if the well had been located on their tract and neither could recover any more even if the well had in fact been drilled on their lease. Thus, production derived from the common pool through a well located upon another tract fulfills the lessee's drilling

obligation upon the entire tract and extends the primary term of the lease upon the entire area leased. Hardy v. Union Producing Co., 207 La. 137, 20 So.2d 734 (1944); Hunter Co. v. Shell Oil Co., 211 La. 893, 31 So.2d 10 (1947).

The orders of the Commissioner of Conservation regulating the development of the various underground pools in the vicinity of the Wunsch lease have no effect upon and are not in conflict with the private contractual undertakings between the various landowners, lessees and operators. Accordingly, the Commissioner's order has not divided the obligation of the Wunsch lease and Chevron is the first to point out that production from either the F Unit well or the H Unit well maintains Chevron's Wunsch lease

in its entirety, despite the admitted fact that neither well is located upon the Wunsch land. Neither the subsurface geology nor the Commissioner's order conflicts with or serves to change the obligations of the Wunsch lease (except the obligation to drill on the land); Chevron still has a single lease covering the entire acreage and LSA-R.S. 9:4861 unambiguously grants to the supplier of labor, material and equipment, a privilege on "the lease whereon" the well is drilled. This well is located on the Wunsch lease; JHJ has a privilege on the entirety of that lease.

Chevron next argues that such a construction calls the Louisiana Oil Well Lien Act into constitutional question. Asserting that as a "carried interest" in the Wunsch well,

who did not initiate the unitization proceedings, did not join in the drilling of the well, did not participate in the selection of the well site and refused to join in paying the cost of the proposed well, Chevron would be liable to the operator for only its proportionate share of the well drilling cost and only out of production; LSA-R.S. 31:177, Chevron then argues that the recognition of a privilege against the entire lease amounts to an unconstitutional taking of its property in violation of the Fourteenth Amendment.

Chevron's argument is wanting. It should first be noted that Chevron incurs no personal liability to JHJ. The privilege is strictly in rem, against the property (lease) only. Second, as an abstract

proposition, if the evidence here showed that, through orders of the state, without Chevron's knowledge or consent, a well were drilled upon its lease and that the well produced no benefit to Chevron, it might have some complaint of constitutional dimension. This well, however, was not drilled over Chevron's protest or in the dead of night without its knowledge and consent. The stipulated facts show that Chevron consented to the drilling of the well on its lease; first, it granted Martin surface rights to drill the well on the lease and second, it later actually entered a farmout agreement with Martin under which it specifically consented to Martin's drilling the well.

Chevron took these actions being held to knowledge of the provi-

sions of the Louisiana Oil Well Lien Act. The purpose of that Act is to protect those, like JHJ, who contribute labor, services and equipment to the drilling of wells from the default of those who engage them. Standard Supply and Hardware Co. v. Humphrey Bros., 209 La. 979, 26 So.2d 8 (1946). The privilege [sic] granted by that statute attaches to all property listed in the statute, regardless of ownership, Blankenship v. Stovall, 159 So. 477 (La. App. 2d Cir. 1935), and requires no contractual relationship between the supplier and the owner of the lease. Oil Well Supply Co. v. Independent Oil Co., 219 La. 936, 54 So.2d 330 (1951).

The parties differ over whether Chevron gained any benefit from the drilling of the well on its

lease by Martin. While a finding of benefit to Chevron is not necessary to the decision in this case, because Chevron consented to the drilling of the well, it can be noted that Chevron gained exactly the same benefit that any other mineral lessee gains by the drilling of a dry hole on its lease. One such benefit is fulfillment of the mineral lessee's obligation to develop the property in a reasonable and prudent manner which Louisiana courts have long recognized, see e.g. Carter v. Arkansas Louisiana Gas Co., 213 La. 1028, 36 So.2d 26 (1948), and which is now included in the Mineral Code, LSA-R.S. 31:122. Surely Chevron would take the position with its lessors that the drilling of the Martin well fulfilled Chevron's obligation to develop the lease.

The Louisiana Oil Well Lien Act is purely economic legislation; it involves no fundamental federal right and affects no suspect class. Thus, under both substantive due process and equal protection analysis, the federal Constitution requires only that the state statute be rationally related to a legitimate state goal. Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955). The question of the wisdom or utility of such legislation is for the legislature, not the courts. Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963). Here regulation and conservation of Louisiana's minerals is a legitimate state interest, as is the protection of persons who perform labor or furnish services in connection with the

drilling of oil, gas and water wells. Granting a lien on the entire lease where the activity giving, rise to the lien occurred is rationally related to these state interests and it is not for this court to say that the legislature might have more logically limited the lien as argued by Chevron. Wilson P. Abraham Const. Co. v. Texas Industries, Inc., 604 F.2d 837 (5th Cir. 1979).

Chevron urges that this court should follow the lead of a Louisiana district judge who has apparently accepted Chevron's constitutional argument in litigation pending against it in state court. With due deference to my state court Brother, Chevron's argument of unconstitutionality under the federal Constitution simply does not persuade me.

Chevron's other arguments do not merit discussion.

For the foregoing reasons, there will be judgment recognizing plaintiff's privilege in the amount of \$1,810,594.29 together with the other sums authorized by LSA-R.S. 9:4861 against that certain oil, gas and mineral lease dated November 10, 1973, executed by Robert H. Wunsch, et ux, in favor of Chevron Oil Company (now Chevron U.S.A., Inc.) recorded on November 27, 1973 in C.O.B. 184 entry number 267, of the records of the Office of the Clerk and Recorder for the Parish of Livingston, Louisiana.

Counsel for plaintiff shall prepare a judgment in accordance with this opinion and submit it to opposing counsel for approval as to form.

A-29

Baton Rouge, Louisiana,
September 11, 1985.

s/ John V. Parker
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT
OF LOUISIANA

APPENDIX C

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JHJ LIMITED I	*	CIVIL ACTION
	*	
VERSUS	*	NO. 82-882
	*	
CHEVRON U.S.A. INC.	*	SECTION 'A'

JUDGMENT

This matter was tried to the Court on the merits on January 7, 1985. Present were:

F. Neelis Roberts
Attorney for Plaintiff,
JHJ Limited I

M. Taylor Darden
Attorney for Defendant,
Chevron U.S.A. Inc.

The Court, considering the law and evidence to be in favor of plaintiff and against defendant, and for the reasons expressed in the Court's Findings of Fact and

Conclusions of Law rendered in this matter on September 11, 1985:

IT IS ORDERED, ADJUDGED AND DECREED that a lien and privilege is hereby recognized in favor of plaintiff, JHJ Limited I in the full amount of \$1,810,594.29, together with legal interest thereon from September 10, 1982 until paid, \$190.00 representing lien filing fees, and an attorney's fee equal to ten (10%) percent of the amount of the lien and privilege, all as provided for in La. R.S. 9:4861 et seq.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said lien and privilege attaches to the working interest in that certain oil, gas and mineral lease, dated November 10, 1973, executed by Robert H. Wunsch, et al in favor of Chevron Oil Company

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(now Chevron U.S.A. Inc.), recorded on
November 27, 1973 in C.O.B. 184, Entry
No. 267, records of Livingston Parish,
Louisiana.

Baton Rouge, Louisiana, this
30 day of December, 1985.

s/ John V. Parker
JOHN V. PARKER
Chief Judge, Middle
District of Louisiana

APPROVED AS TO FORM:

By: s/ M. Taylor Darden
M. TAYLOR DARDEN

APPENDIX D

LOR, INC.

v.

MARTIN EXPLORATION COMPANY,
Chevron USA, Inc., F.F.K. Gas &
Oil Properties f/k/a/ F.F.K. Oil
Company, and W.R. Fairchild
Construction Company, Ltd. and its
General Partners, Wiley Fairchild,
Charles D. Fairchild, Herbert D.
Fairchild and Rodney Fairchild

NEWPARK PIPE & SUPPLY, INC.

v.

MARTIN EXPLORATION COMPANY,
Chevron USA, Inc., F.F.K. Gas &
Oil Properties f/k/a F.F.K. Oil
Company, and W.R. Fairchild
Construction Company, Ltd. and its
General Partners, Wiley Fairchild,
Charles D. Fairchild, Herbert D.
Fairchild and Rodney Fairchild

NEWPARK WASTE TREATMENT SYSTEMS, INC.

v.

MARTIN EXPLORATION COMPANY,
Chevron USA, Inc., F.F.K. Gas &
Oil Properties f/k/a F.F.K. Oil
Company, and W.R. Fairchild
Construction Company, Ltd. and its
General Partners, Wiley Fairchild,
Charles D. Fairchild, Herbert D.
Fairchild and Rodney Fairchild

NEWPARK FLUID SERVICES, INC.

v.

MARTIN EXPLORATION COMPANY,
Chevron USA, Inc., F.F.K. Gas &
Oil Properties f/k/a F.F.K. Oil
Company, and W.R. Fairchild
Construction Company, Ltd. and its
General Partners, Wiley Fairchild,
Charles D. Fairchild, Herbert D.
Fairchild and Rodney Fairchild

GUILLORY TANK TRUCK SERVICES, INC.

v.

MARTIN EXPLORATION COMPANY,
Chevron USA, Inc., F.F.K. Gas &
Oil Properties f/k/a F.F.K. Oil
Company, and W.R. Fairchild
Construction Company, Ltd. and its
General Partners, Wiley Fairchild,
Charles D. Fairchild, Herbert D.
Fairchild and Rodney Fairchild.

Nos. CA 85-0344 to CA 85-0348.

Court of Appeal of Louisiana,
First Circuit.

May 28, 1986.

Writ Denied Sept. 26, 1986.

Furnisher of well drilling
services and equipment sought recog-
nition and enforcement of privileges
granted by the Louisiana Oil, Gas and

Water Well Lien Act and sought issuance of a writ of sequestration against lessee to protect those privileges. After issuance of a writ of sequestration pertaining to two conservation units covering parts of leased premises, the Twenty-First Judicial District Court, Parish of Livingston, Kenneth J. Fogg, J., granted lessee's motion to dissolve writ, and furnisher appealed. The Court of Appeal, Lanier, J., held that: (1) statute granting to the furnisher of well drilling services and equipment a privilege upon the oil, gas or water well or wells and "the lease whereon the same are located" did not restrict the extent of the privilege to the S Unit only, but operated to extend the privilege to the entire lease upon which the

well was located and, hence, to the F and H Units, and (2) statute on privileges, insofar as it could be read as extending to entire lease on which well was located, was not unconstitutional as depriving lessee of its property without due process.

Judgment reversed, and original writ reinstated.

1. Mines and Minerals 114 1/2

Statute granting to the furnisher of well drilling services and equipment a privilege upon the oil, gas or water well or wells and "the lease whereon the same are located" did not restrict the extent of the privilege to the S Unit only, but operated to extend the privilege to the entire lease upon which the well was located and, hence, to the F and H Units. LSA-R.S. 9:4861.

See publication Words and Phrases for other judicial constructions and definitions.

2. Constitutional Law 300(1)
Mines and Minerals 112(1)

Statute granting to the furnisher of well drilling services and equipment a privilege upon the oil, gas or water well or wells and the lease whereon the same are located, insofar as it extended the privilege to the entire lease upon which the well was located, was not unconstitutional as depriving the lessee of its property without due process. LSA-R.S. 1:4, 9:4861; LSA-C.C. art. 13; LSA-Const. Art. 1, §§ 2-4; U.S. C.A. Const.Amends. 5, 14.

Emmett Sole, Lake Charles,
James Kuhn, Denham Springs, for defendants/appellees - Chevron.

Edward D. Wegmand, New Orleans, for plaintiffs/appellants-Lor, Inc.; Guillory Tank Truck Service; Newpark Resources, et al.

John Dale Powers, Baton Rouge, for defendants/appellees-F.F.K. Gas and Oil.

Before EDWARDS, LANIER and JOHN S. COVINGTON, JJ.

LANIER, Judge.

These are five consolidated suits by furnishers of labor, services and supplies on a dry hole oil well seeking recognition and enforcement of privileges granted by the Louisiana Oil, Gas and Water Well Lien Act, La. R.S. 9:4861. Subsequently, the furnishers filed a supplemental and amending petition alleging that other drilling and production units had been established on portions of the leased

premises on which their privileges attached, that the defendants had the power to conceal and dispose of any revenues accruing to the mineral lease thereon and that said furnishers were entitled to a writ of sequestration to protect their privileges. The trial court issued a writ sequestering (1) the oil, gas and mineral lease in question; (2) all oil, gas or other minerals produced from the lease; (3) the proceeds of the sale of any oil, gas or other minerals produced from the lease; and (4) all oil, gas and other minerals produced from the well for which the labor, services and supplies were furnished. The lessee in the lease filed a motion to dissolve the writ of sequestration in its entirety or, in the alternative, to limit the sequestration order to the

production and proceeds of the dry hole well. After a hearing, the trial court rendered judgment dissolving the writ of sequestration insofar as it pertained to two forced conservation units which covered parts of the leased premises and which had producing wells. The furnishers took this suspensive appeal.¹

¹The furnishers also applied to this court for a supervisory writ which was denied with the following rationale:

The judgments granting partial dissolutions of the writs of sequestration may cause irreparable injury to relators since the judgment released from sequestration the most valuable assets previously sequestered. Therefore, we find no distinction between the instant matter and those cases in which writs of attachment and/or sequestration were wholly dissolved and such judgments were entertained on appeal. The judgment herein is an interlocutory order which may cause irreparable injury. See LSA-C.C.P. Art. 2083; Pittman v. Lilly, 197 La. 233, 1 So.2d 88 (1941);

FACTS

The basic facts in this case are set forth in JHJ Limited I v. Chevron U.S.A., Inc., 617 F.Supp. 729, 731 (M.D.La.1985), as follows:

Chevron is the lessee in an oil, gas and mineral lease dated November 10, 1973, referred to as the Wunsch lease, covering some

¹Cont.

Big "A" Sand & Gravel Co. v. Bay Sand & Gravel, 262 So.2d 66 (La.App. 1st Cir.), writ denied, 262 La. 467 263 So.2d 727 (1972). See e.g. Goldberg v. P&R Company, 429 So.2d 554 (La.App. 4th Cir.), writ denied, 433 So.2d 1055 (La. 1983); Yorkwood Savings and Loan Association v. Thomas, 379 So.2d 798 (La. App. 4thCir. 1980); Gretna Finance Company v. Camp, 212 So.2d 857 (La.App. 4th Cir. 1982); Smith v. Utility & Maintenance Contractors of America, Inc., 301 So.2d 906 (La.App. 2nd Cir. 1974), writ denied, 305 So.2d 1539 [539] (La.1975). Relators' proper remedy is by appeal. Moreover, we note that relators state in their application for writs that they have perfected a suspensive appeal from the judgments at issue.

127 acres of land situated in Livingston Parish.

By an order dated October 15, 1981, the Commissioner of Conservation created a unit (the S Unit) which included about 89 acres of Chevron's Wunsch lease. The Commissioner ordered that each tract included in the unit was to share in production from the unit well in proportion to the surface area each tract bears to the entire surface area of the unit. The unit was created for the purpose of insuring orderly mineral development, to prevent waste and to avoid the drilling of unnecessary wells.

Although Chevron received timely notice of the unit application and the hearing thereon, it

chose not to participate in or oppose the proceedings.

The Commissioner's order designated Celt Oil Co., Inc. as the unit operator and Celt requested Martin Exploration Company to handle the engineering aspects of the drilling of the unit well.

The Commissioner chose Chevron's Wunsch lease as the surface location for the S Unit well. Again, Chevron had notice of this hearing but chose not to attend or to participate.

Chevron agreed to let Martin use its Wunsch lease surface rights but refused to participate in the cost of the drilling of the well. Subsequently, Martin was designated as unit operator, vice Celt.

. . . .

The well was spudded in on January 15, 1982.

Subsequently, Chevron granted a farmout agreement to Martin covering that portion of the Wunsch lease (about 89 acres) which was included in the S Unit, effective March 1, 1982. Under the farmout agreement, Martin would earn an interest in the lease if the well drilled at its sole cost produced minerals in paying quantities.

. . . .

In June 1982, when the well had reached a depth of 19,954 feet, Martin suspended operations and no further operations have taken place since then. The well has never been completed as a commercial producer and Martin has

never earned any interest in the Wunsch lease.

. . . .

Portions of the Wunsch lease have also been force pooled into two other units by orders of the Louisiana Commissioner of Conservation, the H Unit and the F Unit. Unit wells on both of those units have been successfully completed and Chevron's Wunsch lease has a working interest in all production from each of those wells. Neither well is physically located on the Wunsch lease and Chevron's participation in the production arises solely from the force pooling orders of the Commissioner.

The furnishers herein and the amounts of their claims are as follows:

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1.	Newpark Fluid Services, Inc.	-	\$ 1,135,423.07
2.	Guillory Tank Truck Services, Inc.	-	7,823.40
3.	Newpark Waste Treatment Systems, Inc.	-	30,062.75
4.	Newpark Pipe and Supply, Inc.	-	473,991.02
5.	LOR, Inc.	-	18,675.40
	TOTAL		\$ 1,665,975.64

All of the labor, services and supplies provided by these furnishers went into the drilling of the Wunsch #1 well in the S Unit. None of the labor, services and supplies were furnished for the unit wells in the F and H Units.²

²JHJ Limited I provided Martin with oil and gas drilling equipment, supplies and services in connection with the drilling of the well and conducted the drilling operations in the S Unit.

EXTENT OF LOUISIANA
OIL WELL LIEN PRIVILEGE

At the time³ the Wunsch #1 well was drilled on the Wunsch lease, La.R.S. 9:4861 provided as follows:

"Any person who performs any labor or service in drilling or in connection with the drilling of any well or wells in search of oil, gas or water, or who performs any labor or service in the operation or in connection with the operation of any oil, gas or water well or wells, has a privilege on all oil or gas produced from the well or wells, and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached

³La.R.S. 9:4861 was amended by Act 949 of 1984.

or located on the lease, for the amount due for labor or service, in principal and interest, and for the cost of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection. Any person who does any trucking, towing, or barging, or who makes any repairs, or furnishes any fuel, drilling rigs, standard rigs, machinery, equipment, material or supplies for or in connection with the drilling of any well or wells in search of oil, gas, or water, or for or in connection with the operation of any oil, gas or water well or wells, whether or not a producing well is obtained and whether or not such materials, machinery, equipment, services and supplies are incorporated in or become a part of the completed oil, gas or water well, has a privilege on all oil or gas produced from the well or wells and the proceeds thereof inuring to the working

interest therein and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks and other structures thereto attached for drilling, equipment and operation of the well or lease, for the amount due for such trucking, towing, barging, repairs, fuel, drilling rigs, standard rigs, machinery, equipment, material, or supplies, in principal and interest, and for the costs of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection thereof. This privilege is second rank only to the privilege granted in favor of laborers."

— We believe the excellent opinion of our learned brother in the federal district court correctly determined the extent of the Louisiana

oil well privilege in JHJ Limited I,
617 F.Supp. at 732-733, as follows:

The Louisiana statute,
LSA-R.S. 9:4861 grants a privilege
or lien to "any person who per-
forms any labor or service" and to
any person who "furnishes any
fuel, drilling rigs, standard
rigs, machinery, equipment,
material or supplies" in connec-
tion with the drilling of a well
to search for oil, gas or water,
inter alia, "... on all oil or gas
produced from the well or wells
and the proceeds thereof inuring
to the working interest therein,
and on the oil, gas or water well
or wells and the lease whereon the
same are located..." (emphasis
supplied).

Although no Louisiana appellate court has passed upon this precise question, this court has little difficulty in concluding that the statute means exactly what it says -- a supplier of well drilling services and equipment is granted a privilege upon "the lease whereon" the well is located. The well drilled by JHJ is located upon the Wunsch lease. Accordingly, JHJ is entitled to a privilege upon the Wunsch lease.

Chevron's argument to the contrary presents a convoluted, serpentine trail through the Louisiana conservation laws concluding with the proposition that, for purposes of the Oil Well Lien Act (but for no other purpose) the action of the Commissioner of

Conservation in force pooling three different areas of the Wunsch lease with other leases had the effect of dividing the lease "for operational purposes" into three separate and independent tracts¹ thus limiting JHJ's privilege to the area of the Wunsch lease included in the S Unit, where the well was drilled. Since the well was not completed as a producer, a privilege upon that portion of the Wunsch lease would be of little benefit to JHJ.

1. Chevron does not mention it but presumably, its argument dictates that the portion of the Wunsch tract which is not included in any unit would constitute a fourth tract.

.

The orders of the Commissioner of Conservation regulating the development of the various underground pools in the vicinity of the Wunsch lease have no effect upon and are not in conflict with the private contractual undertakings between the various landowners, lessees and operators. Accordingly, the Commissioner's order has not divided the obligation of the Wunsch lease and Chevron is the first to point out that production from either the F Unit well or the H Unit well maintains Chevron's Wunsch lease in its entirety, despite the admitted fact that neither well is located upon the Wunsch land. Neither the

subsurface geology nor the Commissioner's order conflicts with or serves to change the obligations of the Wunsch lease (except the obligation to drill on the land); Chevron still has a single lease covering the entire acreage and LSA-R.S. 9:4861 unambiguously grants to the supplier of labor, material and equipment, a privilege on "the lease whereon" the well is drilled. This well is located on the Wunsch lease; JHJ has a privilege on the entirety of that lease.

[1] We agree that La.R.S. 9:4861 is clear and free from ambiguity in providing that the privilege granted therein extends to "the lease whereon the same are located". Louisiana courts are obligated to give effect to

such expressions of the legislative will as written. La.C.C. art. 13; La.R.S. 1:4; Hebbler v. New Orleans Fire Department, 310 So.2d 113 (La. 1975); Bunch v. Town of St. Francisville, 446 So.2d 1357 (La.App. 1st Cir.1984). The trial court committed error by interpreting La.R.S. 9:4861 so as to restrict the extent of the privilege granted therein only to the S Unit.

This assignment of error has merit.

**CONSTITUTIONALITY OF LA.R.S.
9:4861 AS INTERPRETED HEREIN**

Chevron contends that, if La.R.S. 9:4861 is interpreted to apply the privilege to the entirety of the Wunsch lease, then it will be unconstitutionally deprived of its property (proceeds of production attributable to Wunsch lease in the F and H Units) without due process in

violation of La.Const. of 1974, art. I, §§ 2, 3 and 4 and the 5th and 14th Amendments of the United State Constitution.

[2] In JHJ Limited I, 617 F.Supp at 733-734, the federal district court disposed of this argument with the following, which we adopt as our own:

Chevron next argues that such a construction calls the Louisiana Oil Well Lien Act into constitutional question. Asserting that as a "carried interest" in the Wunsch well, who did not initiate the unitization proceedings, did not join in the drilling of the well, did not participate in the selection of the well site and refused to join in paying the cost of the proposed well, Chevron would be liable to the operator

for only its proportionate share of the well drilling cost and only out of production; LSA-R.S. 31:177, Chevron then argues that the recognition of a privilege against the entire lease amounts to an unconstitutional taking of its property in violation of the Fourteenth Amendment.

Chevron's argument is wanting. It should first be noted that Chevron incurs no personal liability to JHJ. The privilege is strictly in rem, against the property (lease) only. Second, as an abstract proposition, if the evidence here showed that, through orders of the state, without Chevron's knowledge or consent, a well were drilled upon its lease and that the well produced no

benefit to Chevron, it might have some complaint of constitutional dimension. This well, however, was not drilled over Chevron's protest or in the dead of night without its knowledge and consent. The stipulated facts show that Chevron consented to the drilling of the well on its lease; first, it granted Martin surface rights to drill the well on the lease and second, it later actually entered a farmout agreement with Martin under which it specifically consented to Martin's drilling the well.^[4]

4. In brief, Chevron contests the accuracy of the facts contained in this paragraph. However, also in brief, Chevron concedes it entered into the following stipulations of fact in the JHJ Limited I case:

Chevron took these actions
being held to knowledge of the

[4]Cont.

7. After the creation of the S Unit, Celt requested Martin Exploration Company ("Martin") to handle the engineering aspects of drilling the unit well for the S Unit, and to coordinate the execution of the required agreements with the other working interest owners in this unit. (Exhibit "D-9")

8. To accomplish that purpose, an operator's meeting was held in Martin's offices on November 13, 1981. At that time, Martin proposed, and the parties in attendance concurred, that the unit well for the S Unit should be drilled on Chevron's Wunsch lease acreage as the optimum location for the unit well. Again, even though it had received prior notice of this operator's meeting, Chevron chose not to attend or participate in it. Later, Chevron learned that its Wunsch lease had been selected as the surface location for the S Unit well in a letter from Martin dated November 16, 1981, three days after the operator's meeting was held. (Exhibit "D-10")

9. In view of that decision, Chevron agreed to let Martin

provisions of the Louisiana Oil Well Lien Act. The purpose of

[4]Cont.

use its Wunsch lease surface rights in the S Unit so as to facilitate operations for the drilling, completing and producing of the R. H. Wunsch No. 1 Well. (Exhibit "D-10")

10. However, Chevron refused to participate in the cost to drill this well. It did so on the basis of its evaluation of the geology and economics pertinent to the prospect, and on the fact that Chevron believed that did not have to drill a well in the S Unit in order to maintain its rights under the Wunsch lease. The Wunsch lease does not contain a Pugh clause (Exhibit "D-1") and during this time, Amoco was conducting drilling operations on (and subsequently obtained production from) two other units in which the Wunsch lease participates.

.

15. After the commencement of these drilling operations, Martin solicited Chevron for a farmout of that portion of its Wunsch lease acreage which had been included within the boundaries of the S Unit.

that Act is to protect those, like JHJ, who contribute labor,

[4]Cont.

16. By letter dated February 9, 1982, Chevron advised Martin of the terms under which Chevron would agree to a farmout (Exhibit "D-13"), which terms, in principal, were found to be acceptable by Martin in its letter to Chevron of February 11, 1982. (Exhibit "D-14") The final agreement was consummated by the parties on April 20, 1982, but was made effective as of March 1, 1982. (Exhibit "D-15")

17. Under the terms of this farmout, Martin acquired the right to earn certain interests in the Wunsch lease insofar, and only insofar, as it was included within the S Unit. To do so, Martin had to drill, at its option, the R. H. Wunsch No. 1 Well at its sole risk, cost and expense to completion as a commercial producer. In exchange, Chevron bore no responsibility for any share of the cost to drill this well. However, if it was completed as a commercial producer, then under the terms of the farmout, Chevron was entitled to receive an overriding royalty interest, convertible to a working interest after payout, on that portion of the well's production attributable to the farmout

services and equipment to the drilling of wells from the default of those who engage them. Standard Supply and Hardware Co. v. Humphrey Bros., 209 La. 979, 26 So.2d 8 (1946). The privilege [sic] granted by that statute attaches to all property listed in the statute, regardless of ownership, Blankenship v. Stovall, 159 So. 477 (La. App. 2d Cir. 1935), and requires no contractual relationship between the supplier and the owner of the lease. Oil Well Supply Co. v. Independent Oil Co., 219 La. 936, 54 So.2d 330 (1951).

[4]Cont.

acreage, i.e., that portion of the Wunsch lease which is included within the boundaries of the S Unit.

The parties differ over whether Chevron gained any benefit from the drilling of the well on its lease by Martin. While a finding of benefit to Chevron is not necessary to the decision in this case, because Chevron consented to the drilling of the well, it can be noted that Chevron gained exactly the same benefit that any other mineral lessee gains by the drilling of a dry hole on its lease. One such benefit is fulfillment of the mineral lessee's obligation to develop the property in a reasonable and prudent manner which Louisiana courts have long recognized, see e.g. Carter v. Arkansas Louisiana Gas Co., 213 La. 1028, 36 So.2d 26 (1948), and which is now included

in the Mineral Code, LSA-R.S. 31:122. Surely Chevron would take the position with its lessors that the drilling of the Martin well fulfilled Chevron's obligation to develop the lease.

The Louisiana Oil Well Lien Act is purely economic legislation; it involves no fundamental federal right and affects no suspect class. Thus, under both substantive due process and equal protection analysis, the federal Constitution requires only that the state statute be rationally related to a legitimate state goal. Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955). The question of the wisdom or utility of such legislation is for

the legislature, not the courts. Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963). Here regulation and conservation of Louisiana's minerals is a legitimate state interest, as is the protection of persons who perform labor or furnish services in connection with the drilling of oil, gas and water wells. Granting a lien on the entire lease where the activity giving rise to the lien occurred is rationally related to these state interests and it is not for this court to say that the legislature might have more logically limited the lien as argued by Chevron. Wilson P. Abraham Const. Co. v. Texas

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Industries, Inc., 604 F.2d 837

(5th Cir. 1979).

La.R.S. 9:4861 is constitutional under the constitutions of the United States and the State of Louisiana.

DECREE

For the foregoing reasons, the judgment of the trial court which dissolved the writ of sequestration insofar as it pertained to the portions of the Wunsch lease located in the F and H units is reversed, and the original writ of sequestration issued herein is reinstated. Pursuant to the requirements of La.C.C.P. art. 2089, the immovable property which is subject to this writ of sequestration is particularly described as follows:

All right, title and interest of
CHEVRON U.S.A. INC., formerly
CHEVRON OIL COMPANY (hereinafter

"Chevron"), and F.F.K. Gas & Oil Properties f/k/a F.F.K. Oil Company, and W.R. Fairchild Construction Company, Ltd., and, its general partners Wiley Fairchild, Charles D. Fairchild, Herbert D. Fairchild and Rodney Fairchild in and to: (1) that certain oil, gas & mineral lease entered into on November 10, 1973, by and between Robert H. Wunsch, husband of Vietta Lockhart Wunsch and Chevron, recorded on November 27, 1973 in Livingston Parish in C.O.B. 184, Page 267, Entry No. 97996 affecting certain lands further described on Exhibit "A" attached hereto, which lease is attached hereto as Exhibit "B", including all oil, gas or other minerals produced therefrom and

the proceeds from any sale of oil, gas or other minerals produced from said lease; and (2) all oil, gas or other minerals produced from that certain oil, gas or mineral well, designated as the Wunsch #1, and being located on the aforementioned lease, and the proceeds thereof inuring to the working interests therein;

The above-described oil, gas and mineral lease affects the following described lands, to-wit:

TRACT 1: A certain tract of land in the second ward of the Parish of Livingston, State of Louisiana, and described as follows: 105 acres of land in Section 48, Township 6 South, Range 3 East, and bounded now or formerly, North by the lands of Roberts; East by

Grays Creek and Troy Roberts;
South by the Baton Rouge Hammond &
Eastern Railroad Company; and West
by the lands of Mrs. A. A. Jones
and Noah Stafford; being the same
land acquired by Lessor herein by
Judgment of Possession dated March
5, 1936 and recorded in Conveyance
Book 102, Folio 439 of the Con-
veyance Records of Livingston
Parish, Louisiana; LESS AND EXCEPT
(a) 20 acres of the aforesaid
tract of land sold by Edward
Wunsch to Monroe Rheams; and
(b) a certain tract or parcel of
ground, containing 0.3102 acres,
lying and being situated in the
Parish of Livingston, State of
Louisiana, in Section 48, Township
6 South, Range 3 East, and more
particularly described as Parcel

"C" on the plat attached to an Act of Sale from Robert H. Wunsch to the Gravier Corporation, said act being dated November 28, 1967 and recorded in Conveyance Book 133, Folio 692 of the Records of Livingston Parish, Louisiana; and (c) a certain tract or parcel of ground containing 9.6 acres, situated in the Parish of Livingston, State of Louisiana, in Section 48, Township 6 South, Range 3 East and being more particularly described as follows, to-wit: From a point which is the Northeast corner of Kimberly Heights Subdivision run South 10 degrees West 1,389 feet and corner, thence East 300 feet and corner, thence North 10 degrees East 1,389 feet and corner, thence West 300 feet and

corner, thence South 10 degrees West 50 feet to point of beginning, all according to a plat of a survey by Kerstens, C.E., dated September 25, 1962; being the same tract conveyed by Robert H. Wunsch, Lessor herein, to Authur A. Thibodeaux by Act of Sale dated January 8, 1963 and recorded in Conveyance Book 105, Folio 166 of the Records of Livingston Parish, Louisiana.

TRACT 2: A certain piece of land in the second ward of the Parish of Livingston, State of Louisiana, lying and being situated in Section 48, Township 6 South, Range 3 East and containing 8.16 acres, known and described as follows: Beginning at the Southeast corner of Section 48, Township 6 South,

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Range 3 East, thence South 89 degrees 50 minutes West 7.13 chains to a corner; thence North 0 degrees 25 minutes East 11.79 chains to a corner in the center of road; thence with traverse of road to a corner on the East line of Section 48; thence South 25 degrees West 11.11 chains back to the place of beginning, as per survey made by L.B. Harris; being part of the same land acquired by Lessor herein by Judgment of Possession dated March 5, 1936 and recorded in Conveyance Book 102, Folio 439 of the Records of Livingston Parish, Louisiana; LESS AND EXCEPT: A certain tract or parcel of land containing 0.75 acres, more or less, and located in Section 48, Township 6 South,

Range 3 East, Livingston Parish, State of Louisiana, and being more particularly described according to a plat of survey, dated December 2, 1969, by J.C. Kerstens, C.E. and surveyor, entitled "Plat of Survey of Lot out of R.H. Wunsch Tract in Sections 48 and 32, Township 6 South, Range 3 East, G.L.D., Livingston Parish," a copy of which is attached to an Act of Sale dated December 12, 1969 and recorded in Conveyance Book 148, Folio 269 of the Records of Livingston Parish, Louisiana, by which Act said 0.75 acre tract was conveyed by Lessor herein to R.T. Bonneval; said 0.75 acre tract being more particularly described as follows: From the Southeast

corner of Denham Heights Sub-division proceed South 6 degrees 30 minutes West a distance of 80 feet; thence South 83 degrees 30 minutes East a distance of 755 feet to point of beginning; thence go South 83 degrees 30 minutes East a distance of 165 feet to corner; thence South 1 degree 0 minutes East a distance of 200 feet to point of corner; thence North 83 degrees 30 minutes West a distance of 165 feet to point and corner; thence go North 1 degree 0 minutes West a distance of 200 feet to point of beginning.

TRACT 3: A certain tract of land containing 14.67 acres, situated in the second ward of the Parish of Livingston, State of Louisiana, Section 48, Township 6 South,

Range 3 East, and described as follows, to-wit: Starting at an iron stake cornering the lands of J.C. Cooper on West and E.E. Wunsch on South, running North 15 degrees 30 minutes East 11.32 chains to an iron stake on Model Road on North and J.C. Cooper on West, thence running 70 degrees 30 minutes East 3.75 chains; thence South 89 degrees 40 minutes East, thence North 79 degrees 4.66 chains to an iron stake cornering on North and Joe Kimble on East, thence South 19 degrees 45 minutes West 11.31 chains to an iron stake, Joe Kimble on East and E.E. Wunsch on South; thence starting at the Southwest corner and running South 89 degrees 30 minutes East 17.79 chains to the iron

stake cornering with Joe Kimble on East and E.E. Wunsch on South as per blue print attached to title as per act of record recorded in Book 37, page 127 of the Conveyance records of the Parish of Livingston, State of Louisiana; being part of the land acquired by Lessor herein by Judgment of Possession dated March 5, 1936 and recorded in Conveyance Book 102, Folio 439 of the Records of Livingston Parish, Louisiana.

TRACT 4: A certain tract of land, lying and being situated in Section 32, Township 6 South, Range 3 East, Parish of Livingston, State of Louisiana, containing 14.55 acres, and more particularly described as follows, to-wit: Begin at the Southeast corner or

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Section 48, thence North 89 degrees 50 minutes East 1440 chains to a corner, thence North 0 degrees 15 minutes East 870 chains to a corner on the public road returning. to place of beginning; thence 0 degrees 26 minutes East 11.0 chains to public road, thence with traverses of road to a corner previously established; being the same land acquired by E.E. Wunsch by Deed of record in Conveyance office Book 28, Folio 178; being part of the land acquired by Lessor herein by Judgment of Possession dated March 5, 1936 and recorded in Conveyance Book 102, Folio 439; all of the Records of Livingston Parish, Louisiana.

TRACT 5: A certain tract of land, lying and being situated in Sections 32 and 33, Township 6 South, Range 3 East, containing 15.60 acres, more or less, and being described more particularly as follows: Commencing at the Southeast corner of Section 32 and measure East 4.74 chains to Southeast corner of a one and one-half acre strip, thence North 6.21 chains to station 1280 of Model Road Survey, thence West 6.0 chains along said survey, thence North 82.5 degrees West 12.92 chains to East line of Eden Church property, thence South 1.72 chains to corner of road, thence North 76 degrees West 4.45 chains, thence South 7.14 chains to wire fence, thence East along said fence 18.55 chains to point

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of beginning; and being the same property acquired by Lessor herein by Judgment of Possession dated March 5, 1936 and recorded in Conveyance Book 102, Page 439 of the Records of Livingston Parish, Louisiana.

Chevron is cast for the cost of this appeal.

R I E

